

Amendment No. 1 to HB1108

Watson
Signature of Sponsor

AMEND Senate Bill No. 701*

House Bill No. 1108

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 40-32-101, is amended by deleting subdivision (g)(14) in its entirety.

SECTION 2. Tennessee Code Annotated, Section 40-32-101, is amended by adding the following new subsections (h) and (i):

(h)

(1) Notwithstanding any other provision of law to the contrary, an order of expunction granted pursuant to subdivisions (a)(1)(A), (a)(1)(F), (a)(2), (a)(3), (a)(5), (a)(6), or subsections (f) or (g) entitles the petitioner to have all public records of the expunged arrest warrant, citation, indictment, presentment, information, or conviction destroyed in the manner set forth in this section.

(2) Additionally, such an expunction has the legal effect of restoring the petitioner, in the contemplation of the law, to the same status occupied before the arrest, indictment, presentment, information, trial or conviction. Once the expunction order is granted and the petitioner pays any fee required, if a fee is applicable, no direct or indirect collateral consequences that are generally or specifically attendant to the petitioner's arrest, indictment, presentment, information, trial or conviction by any law shall be imposed or continued.

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(3) A petitioner with respect to whom an order has been granted under subdivisions (a)(1)(A), (a)(1)(F), (a)(2), (a)(3), (a)(5), (a)(6), or subsections (f) or (g) shall not be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge the arrest, indictment, presentment, information, trial or conviction in response to any inquiry made of the petitioner for any purpose.

(4) Expunction under subdivisions (a)(1)(A), (a)(1)(F), (a)(2), (a)(3), (a)(5), (a)(6), or subsections (f) or (g) mean, in contemplation of law, the arrest, indictment, presentment, information, trial or conviction for the expunged offense never occurred and the person shall not suffer any adverse effects or direct disabilities by virtue of being arrested, indicted, tried or convicted of the criminal offense that was expunged.

(i) A person whose petition for the expunction of public records under subdivisions (a)(1)(A), (a)(1)(F), (a)(2), (a)(3), (a)(5), (a)(6), or subsections (f) or (g) is denied has an appeal of right as follows:

(1) If the court having jurisdiction to expunge the records requested is not a court of record, the appeal shall be taken the same as an appeal from general sessions court as provided in § 27-5-108.

(2) If the court having jurisdiction to expunge the records requested is a court of record, the appeal shall be taken as provided in Rule 3 of the Tennessee Rules of Appellate Procedure.

SECTION 3. Tennessee Code Annotated, Section 40-32-101, is amended by deleting subdivision (g)(8) and substituting instead the following:

(8) The petition and proposed order shall be prepared by the office of the district attorney general and given to the petitioner to be filed with the clerk of the court. However, if the petitioner is represented by counsel, this subdivision does not prohibit the petitioner's attorney from preparing and filing the petition and final order of expunction. A petitioner shall be entitled to a copy of the order of expunction and such copy shall be sufficient proof that the person named in the order is no longer under any disability, disqualification or other adverse consequence resulting from the expunged conviction.

Section 4. Tennessee Code Annotated, Section 40-32-101, is amended by deleting subdivision (g)(2)(A) and substituting instead the following:

(A) Except as provided in (g)(1)(C), at the time of filing, the person has never been convicted of any criminal offense, including federal offenses and offenses in other states, other than the offense committed for which the petition for expunction is filed;

SECTION 5. Tennessee Code Annotated, Section 40-32-101, is amended by adding the following new subdivision (g)(1)(C) and by redesignating present subdivision (g)(1)(C) accordingly:

(C) A person who has two (2) or more convictions, if:

(i) Each conviction sought to be expunged is not for an offense for which expunction under this subsection is prohibited;

(ii) The person has never been convicted of any criminal offense, including federal offenses and offenses in other states, other than the offenses for which the petition for expunction is filed;

(iii) The judgment of conviction for the offenses were all entered on the same day and in the same court;

(iv) The court having jurisdiction to expunge the convictions requested in the petition determines that all the convictions arose from a common criminal event as opposed to a disconnected and independent series of events for which expunction under this subsection may not be appropriate.

SECTION 6. Tennessee Code Annotated, Section 40-32-101, is amended by adding the following sentence between the first and second sentences of subsection (g)(10):

The fee for filing a petition for the expunction of multiple convictions under subdivision (g)(1)(C) shall also be three hundred and fifty dollars (\$350.00).

SECTION 7. Tennessee Code Annotated, Section 40-32-101, is amended by deleting subdivisions (g)(1)(A) and (g)(1)(B) and substituting instead the following:

(A) A person who was convicted of one of the following Class E felonies and sentenced to imprisonment for a term of three (3) years or less for an offense committed on or after November 1, 1989:

(i) Section 39-11-411 — Accessory after the fact;

(ii) Section 39-13-306 — Custodial interference where person not voluntarily returned by defendant;

(iii) Section 39-13-604(c)(2) — Knowing dissemination of illegally recorded cellular communication;

(iv) Section 39-14-105(a)(2) — Theft;

(v) Section 39-14-114(c) — Forgery;

(vi) Section 39-14-115 — Criminal simulation;

(vii) Section 39-14-116(c) — Hindering secured creditors;

- (viii) Section 39-14-117(b) — Fraud in insolvency;
- (ix) Section 39-14-118 — Fraudulent use of credit card or debit card;
- (x) Section 39-14-121 — Worthless checks;
- (xi) Section 39-14-130 — Destruction of valuable papers;
- (xii) Section 39-14-131 — Destruction or concealment of will;
- (xiii) Section 39-14-133 — Fraudulent or false insurance claim;
- (xiv) Section 39-14-137(b) — Fraudulent qualifying for set aside programs;
- (xv) Section 39-14-138 — Theft of trade secrets;
- (xvi) Section 39-14-139 — Sale of recorded live performances without consent;
- (xvii) Section 39-14-143(e) — Unauthorized solicitation for police, judicial or safety associations;
- (xviii) Section 39-14-147(f) — Fraudulent transfer of motor vehicle with value of less than \$20,000;
- (xix) Section 39-14-149 — Communication theft;
- (xx) Section 39-14-402(a)(4) — Burglary of an auto;
- (xxi) Section 39-14-408 — Vandalism;
- xxii) Section 39-14-411 — Utility service interruption or property damage;
- (xxiii) Section 39-14-505 — Aggravated criminal littering;
- (xxiv) Section 39-14-602 — Violation of Tennessee Personal and Commercial Computer Act;
- (xxv) Section 39-14-603 — Unsolicited bulk electronic mail;

(xxvi) Section 39-16-201(b)(3) — Taking telecommunication device into penal institution;

(xxvii) Section 39-16-302 — Impersonation of licensed professional;

(xxviii) Section 39-16-603 — Evading arrest in motor vehicle where no risk to bystanders;

(xxix) Section 39-16-609(e) — Failure to appear;

(xxx) Section 39-17-106 — Gifts of adulterated candy or food;

(xxxi) Section 39-17-417(f) — Manufacture, delivery, sale or possession of Schedule V drug;

(xxxii) Section 39-17-417(g)(1) — Manufacture, delivery, sale or possession of not less than ½ ounce and not more than 10 pounds of Schedule VI drug marijuana;

(xxxiii) Section 39-17-417(h) — Manufacture, delivery, sale or possession of Schedule VII drug;

(xxxiv) Section 39-17-418(e) — Simple possession or casual exchange;

(xxxv) Section 39-17-422(c) — Selling glue for unlawful purpose;

(xxxvi) Section 39-17-423(c) — Counterfeit controlled substance;

(xxxvii) Section 39-17-425(b)(1), (2), (3) — Unlawful drug paraphernalia uses and activities;

(xxxviii) Attempt under § 39-12-101, solicitation, under § 39-12-103, or conspiracy under § 39-12-103, to commit any of the offenses enumerated in this subdivision (g)(1)(A); or

(xxxix) Criminal responsibility, under § 39-11-402(2), for facilitating the commission under § 39-11-403 of any of the offenses enumerated in this subdivision (g)(1)(A).

(B) Except as provided in this subdivision (g)(1)(B), a person who was convicted of a misdemeanor offense committed on or after November 1, 1989. Misdemeanors excluded from consideration are:

- (i) Section 39-13-101(a)(1) and (2) — Assault;
- (ii) Section 39-13-102 — Aggravated assault of public employee;
- (iii) Section 39-13-111 — Domestic assault;
- (iv) Section 39-13-113(g) — Violation of protective or restraining order;
- (v) Section 39-13-113(h) — Possession of firearm while order of protection in effect;
- (vi) Section 39-13-511 — Public indecency 3rd or subsequent offense;
- (vii) Section 39-13-511 — Indecent exposure (victim under 13 years of age) or by person in penal institution exposing to a guard;
- (viii) Section 39-13-526(b)(1) and (2) — Violation of community supervision by sex offender not constituting offense or constituting misdemeanor;
- (ix) Section 39-13-528 — Soliciting minor to engage in Class E sexual offense;
- (x) Section 39-13-533 — Unlawful sexual contact by authority figure;
- (xi) Section 39-14-304 — Reckless burning;
- (xii) Section 39-14-406 — Aggravated criminal trespass of a habitation, hospital, or on the campus of any public or private school, or on railroad property;
- (xiii) Section 39-15-201(b)(3) — Coercion — abortion;
- (xiv) Section 39-15-210 — Third or subsequent violation of Child Rape Protection Act of 2006;

(xv) Section 39-15-401(a) — Child abuse (where child is between ages 7-17);

(xvi) Section 39-15-401(b) — Child neglect and endangerment (where child is older than 8 but less than 18);

(xvii) Section 39-15-404 — Enticing a child to purchase intoxicating liquor - purchasing alcoholic beverage for child;

(xviii) Section 39-15-404 — Allowing person ages 18-21 to consume alcohol on person's premises;

(xix) Section 39-15-414 — Harboring or hiding a runaway child;

(xx) Section 39-17-315 — Stalking;

(xxi) Section 39-17-431 — Unlawful dispensing of immediate methamphetamine precursor, sale of meth precursor to person on methamphetamine registry or purchase by someone on registry, possess meth precursor with intent to sell to another for unlawful use, purchase meth precursor for another for unlawful use, purchase meth precursor at different times and places to circumvent limits, and use false ID to purchase meth precursor for purpose of circumventing limits;

(xxii) Section 39-17-437 — Using substance or device to falsify drug test results and selling synthetic urine;

(xxiii) Section 39-17-438 — Possession of the hallucinogenic plant *Salvia Divinorum* or the synthetic cannabinoids;

(xxiv) Section 39-17-452 — Sale or possession of synthetic derivatives or analogues of methcathinone;

(xxv) Section 39-17-902(a) — Importing, preparing, distributing, processing, or appearing in obscene material or Class A misdemeanors;

(xxvi) Section 39-17-907 — Unlawful exhibition of obscene material;

(xxvii) Section 39-17-911 — Sale or loan to minors of harmful materials;

(xxiii) Section 39-17-918 — Unlawful massage or exposure of erogenous areas;

(xxix) Section 39-17-1307(f)(1)(A) — Possession of firearm after being convicted of misdemeanor crime of domestic violence;

(xxx) Section 39-17-1307(f)(1)(B) — Possession of firearm while order of protection is in effect;

(xxxi) Section 39-17-1307(f)(1)(C) — Possession of firearm while prohibited by state or federal law;

(xxxii) Section 39-17-1312 — Failure of adult to report juvenile carrying gun in school;

(xxxiii) Section 39-17-1320(a) — Nonparent providing handgun to a juvenile;

(xxxiv) Section 39-17-1352 — Failure to surrender handgun carry permit upon suspension;

(xxxv) Section 39-17-1363 — Violent felon owning or possessing vicious dog;

(xxxvi) Section 39-13-101(a)(3) — Assault (offensive or provocative physical contact);

(xxxvii) Section 39-13-511(a) — Public indecency;

(xxxviii) Section 39-13-511(b)(2) — Indecent exposure (victim 13 years old or older);

(xxxix) Section 39-15-412(b) — Disseminating smoking paraphernalia to minor after 3 prior violations;

(xl) Section 39-16-404 — Misuse of official information by public servant;

(xli) Section 39-17-317 — Disorderly conduct at funerals;

(xlii) Section 39-17-715 — Possession of or consuming alcoholic beverages on K-12 school premises;

(xlili) Section 39-17-914 — Display for sale or rental of material harmful to minors; and

(xliv) Section 55-10-401 — Driving under the influence of an intoxicant; or

SECTION 8. This act shall take effect July 1, 2013, the public welfare requiring it and shall apply to petitions for expunction pursuant to TCA § 40-32-101(g) filed prior to or after such date.